



DEC

2002

## FAIR POLITICAL PRACTICES COMMISSION

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(916) 322-5660 • Fax (916) 322-0886

December 24, 2002

Charles H. Bell, Jr.  
Bell, McAndrews, Hiltachk & Davidian, LLP  
Attorneys and Counselors at Law  
455 Capitol Mall, Suite 801  
Sacramento, CA 95814

**Sent via mail and facsimile to (916) 442-7759**

**Re: Your Request for a Formal Opinion  
Our File No. O-02-348**

RECEIVED  
DEC 24 2002

Dear Mr. Bell:

I received your request for a formal opinion on December 17, 2002. Any person may request the Commission to issue an opinion or provide written advice with respect to his or her duties under the Political Reform Act ("the Act").<sup>1</sup> (Government Code section 83114.) The Executive Director shall determine whether to grant or deny opinion requests. (Regulation 18320(d).) Among the criteria upon which denial of an opinion request may be based are the following:

"1) The question raised is covered by Commission regulations.

"2) The question raises no substantial question of interpretation and, therefore, requires only a routine reply more appropriately made by staff.

"3) The person who made the request does not have sufficient interest (standing) in the question to justify an opinion being issued.

<sup>1</sup> Government Code sections 81000 – 91014. Commission regulations appear at title 2, sections 18109 – 18997, of the California Code of Regulations.

"4) The question is hypothetical. However, opinion requests may be granted if the hypothetical facts stated represent an intended course of conduct which is contingent on the Commission's opinion.

"5) The question is overbroad in that it asks for an interpretation of the Act in general terms.

"6) The request does not present material facts and does not state a question based on the facts presented.

"7) The question is outside the scope of the Political Reform Act." (Reg. 18320(f).

You state that you are the responsible person for an unidentified entity that wishes to engage in "issue advocacy" activity (1) with respect to criticism of local elected officeholders, and (2) to comment on matters that may qualify for the ballot at the local level. You advise that the entity is not a registered campaign committee under Gov. Code § 82013, subdivisions (a)-(c) inclusive. You state that you and the entity may have duties under the Political Reform Act, Government Code § 83114.

You are requesting formal advice or an opinion on the application of "The Governor Gray Davis Committee v. American Taxpayers Alliance." Specifically, you are requesting the Commission to confirm that (1) it will follow the *Davis* decision in construing Government Code § 82025 and Title 2, Cal. Code Regs., § 18225(b)(2), to apply an "express words of advocacy" standard to the determination of whether an expenditure "expressly advocates" the election or defeat of a clearly identified local candidate or ballot measure, for purposes of the registration and reporting requirement of the Political Reform Act, and (2) it will not enforce the last sentence of Regulation 18225(b)(2), to regulate a communication "that otherwise refers to a clearly identified local candidate or ballot measure so that the communication, taken as a whole, unambiguously urges a particular result in an election."

Your request presents important questions of law, but no factual question appropriate for the issuance of a Commission opinion. Specifically, your request is not one based on material facts that you have provided and is overbroad in that it asks for an interpretation of the Act in general terms. As a result, I hereby deny your request for an opinion.

Be advised, however, that the Commission has already determined (at its December 13, 2002, meeting) that the issues involved in your December 17 request will be addressed by the Commission. If regulatory or other action is required, it is anticipated that an item will be placed on the Commission agenda for action at the March 2003 Commission meeting or shortly thereafter.

Pursuant to Regulation 18321, you have the right to seek a review of this denial at the next Commission meeting following the issuance of this letter. If you wish to request a review for the January 17, 2003 meeting, your request must be received no later than December 31, 2003. If a majority of the Commission decides to grant your request, this denial will be rescinded and an opinion will issue as provided in Commission regulations 18322 and 18324.

If you have any questions, please contact John W. Wallace, Assistant General Counsel, at (916) 322-5660.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Mark Krausse", with a long horizontal flourish extending to the right.

Mark Krausse  
Executive Director

MK:jww